



## **Case Summary**

Dale Englehardt appeals his sentences and fines for Class C felony sexual misconduct with a minor and Class C felony bribery. We affirm.

## **Issues**

Englehardt raises two issues, which we restate as:

- I. whether the trial court properly imposed two \$5,000 fines during sentencing; and
- II. whether his thirteen-year sentence is appropriate.

## **Facts**

Englehardt fondled his fourteen-year-old victim under her underwear and under her shirt in June of 2004. He was initially charged with Class B felony sexual misconduct with a minor on December 10, 2005. Prior to trial on that charge, Englehardt met with the victim's brother and offered to give the victim a car if she changed her testimony. The State charged Englehardt with Class C felony bribery on January 18, 2006.

On January 18, 2006, Englehardt pled guilty to Class C felony sexual misconduct with a minor and Class C felony bribery. The State dismissed an unrelated Class C felony operating motor a vehicle after lifetime forfeiture charge. The plea agreement did not stipulate a sentence. The trial court sentenced Englehardt to six years for the bribery conviction and seven years for the sexual misconduct conviction, to be served consecutively. The trial court also imposed a fine of \$5,000 on each count. This appeal followed.

## Analysis

### *I. Fine*

Englehardt contends that the fines were a punitive measure not contemplated by the plea agreement and the trial court erred in assessing them.<sup>1</sup> Englehardt cites Gipperich v. State, 658 N.E.2d 946 (Ind. Ct. App. 1995), trans. denied, to support his contention that the fine is a punitive measure outside the scope of the plea agreement. In that case Gipperich’s plea agreement provided for payment of counseling fees for the victims and the payment of costs. The trial court imposed an additional and separate fine of \$5,000 for each of the four convictions. We held that the trial court “improperly wavered from the terms of the accepted plea agreement by imposing fines for which no provision existed in the agreement.” Gipperich, 658 N.E.2d at 950.

The Gipperich case is distinguishable from the facts on appeal here. All elements of Englehardt’s sentence were to be litigated at the sentencing hearing, and the plea agreement did not specify whether fines, payments, or court costs would be assessed. The plea agreement itself has a section entitled “sentencing shall be as follows,” and the only marking of the choices is next to “litigate.” App. p. 51. The other lines, including choices for fines and court costs, are left blank. Additional areas on the form are also left blank, including the options for various program and prevention fees. It is clear that the potential for these extra elements was to be litigated and decided by the trial court. Gipperich’s plea agreement specified the financial obligations he agreed to while

---

<sup>1</sup> The State argues that Englehardt waived his right to appeal the fines by not objecting to them during the sentencing. We choose to address this issue on the merits.

Englehardt's plea included no such specifications and indicated no agreement to any sort of limit for financial obligations.

Contrary to the assertion in Englehardt's brief, during the guilty plea hearing the trial court reminded Englehardt that there was a maximum fine of ten thousand dollars on a Class C felony and Englehardt responded that he understood. Indiana Code Section 35-50-2-6 provides that a person convicted of a Class C felony may not be fined more than \$10,000. Englehardt was fined \$5,000 for each conviction and though it is no small fine, it not as burdensome as the maximum amount. The plea agreement did not prohibit fines, and trial court did not err in assessing them.

## ***II. Appropriateness of Sentence***

We now assess whether Englehardt's thirteen-year sentence for Class C felony sexual misconduct and Class C felony bribery is inappropriate under Indiana Appellate Rule 7(B) in light of his character and the nature of the offenses. Although Rule 7(B) does not require us to be "extremely" deferential to a trial court's sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. "Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate." Id.

The advisory sentence<sup>2</sup> for a Class C felony is four years, with the minimum and maximum between two and eight years. Ind. Code § 35-50-2-6. The trial court enhanced the advisory sentence by three years for the sexual misconduct conviction and two years for the bribery conviction. Englehardt contends that because the bribery crime was not “an act of violence, nor did it involve a threat of violence” that the offense does not require an enhanced sentence. Appellant’s Br. p. 10. We disagree. Both the nature of the offense and Englehardt’s character suggest that an enhanced sentence is appropriate. The original crime involved a forty-four-year-old man’s inappropriate fondling of a fourteen-year-old girl. Englehardt later attempted to bribe his victim in an effort to corrupt the judicial process. He committed a very serious crime by encouraging a young victim to break the law by committing perjury.

Englehardt’s criminal record accumulated during the past twenty-five years is troublesome and does not reflect well upon his character. It includes six felonies involving driving after suspension or forfeiture, one drug related felony, and multiple misdemeanors including battery, public intoxication, and resisting arrest. His probation for the various sentences for these past offenses had been revoked at least six times. Englehardt seems to contend that because a psychologist’s report found he was unlikely to re-offend, his character deserves positive weight. We do not believe the predictions of his potential for future sexual misconduct can alter our assessment of his poor character.

---

<sup>2</sup> At the time Englehardt committed the sexual misconduct, our legislature had not yet changed “presumptive” sentences to “advisory” sentences. Despite this classification change, the length for such Class C felonies remained four years.

Although the fact that Englehardt pled guilty is a positive, in considering the benefits he received for the guilty plea, it is not afforded a great deal of mitigating weight. See McElroy v. State, 865 N.E.2d 584, 591-92 (Ind. 2007). The sexual misconduct charge was reduced from a Class B to a Class C felony, and the State dismissed a Class C felony operating a vehicle after lifetime forfeiture charge.

The bribery conviction is especially damaging to Englehardt's character. An offer to buy his victim's testimony denigrates the seriousness of the original offense, and denigrates not only her, but also the entire judicial process. By encouraging the victim to lie, Englehardt demonstrated that his regard for honesty and integrity is non-existent, and such a valuation illustrates poor character. We conclude that the thirteen-year sentence is not inappropriate in light of the nature of the offenses and Englehardt's character.

### **Conclusion**

The trial court did not err by assessing two \$5,000 fines against Englehardt. His thirteen-year sentence is appropriate in light of the nature of the offenses and his character. We affirm.

Affirmed.

CRONE, J., and BRADFORD, J., concur.